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HOUSE BILL 534

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY
Eleanor Chavez

AN ACT

RELATING TO PUBLIC RECORDS; ALLOWING FOR ELECTRONIC REQUEST OF
PUBLIC RECORDS; REQUIRING A PUBLIC RECORDS CUSTODIAN TO MAKE
PUBLIC RECORDS AVAILABLE VIA ELECTRONIC MEDIA UPON REQUEST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 14-2-8 NMSA 1978 (being Laws 1993,
Chapter 258, Section 5) is amended to read:

"14-2-8. PROCEDURE FOR REQUESTING RECORDS.--

A. Any person wishing to inspect public records may
submit an oral or written request to the custodian. A written
request may be made in electronic or paper form. Information
on how to make requests for public records shall be prominently
displayed on a publicly accessible web site maintained by or
for the public body holding the public records. However, the
procedures set forth in this section shall be in response to a

1 written request. The failure to respond to an oral request
2 shall not subject the custodian to any penalty.

3 B. Nothing in the Inspection of Public Records Act
4 shall be construed to require a public body to create a public
5 record.

6 C. A written request shall provide the name,
7 address and telephone number of the person seeking access to
8 the records and shall identify the records sought with
9 reasonable particularity. No person requesting records shall
10 be required to state the reason for inspecting the records.

11 D. A custodian receiving a written request shall
12 permit the inspection immediately or as soon as is practicable
13 under the circumstances, but not later than fifteen days after
14 receiving a written request. If the inspection is not
15 permitted within three business days, the custodian shall
16 explain in writing when the records will be available for
17 inspection or when the public body will respond to the request.
18 The three-day period shall not begin until the written request
19 is delivered to the office of the custodian.

20 E. In the event that a written request is not made
21 to the custodian having possession of or responsibility for the
22 public records requested, the person receiving the request
23 shall promptly forward the request to the custodian of the
24 requested public records, if known, and notify the requester.
25 The notification to the requester shall state the reason for

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1 the absence of the records from that person's custody or
2 control, the records' location and the name and address of the
3 custodian."

4 Section 2. Section 14-2-9 NMSA 1978 (being Laws 1993,
5 Chapter 258, Section 6) is amended to read:

6 "14-2-9. PROCEDURE FOR INSPECTION.--

7 A. Requested public records containing information
8 that is exempt and nonexempt from disclosure shall be separated
9 by the custodian prior to inspection, and the nonexempt
10 information shall be made available for inspection. If
11 necessary to preserve the integrity of computer data or the
12 confidentiality of exempt information contained in a database,
13 a partial printout of data containing public records or
14 information may be furnished in lieu of an entire database.

15 B. A custodian:

16 (1) may charge reasonable fees for copying the
17 public records, unless a different fee is otherwise prescribed
18 by law;

19 (2) shall not charge fees in excess of one
20 dollar (\$1.00) per page for documents eleven inches by
21 seventeen inches in size or smaller;

22 (3) may require advance payment of the fees
23 before making copies of public records;

24 (4) shall not charge a fee for the cost of
25 determining whether any public record is subject to disclosure;

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1 [and]

2 (5) shall provide a receipt, upon request; and

3 (6) shall make public records available in
4 electronic form accessible from a remote location, upon
5 request, for a fee of twenty-five cents (\$.25) or less per
6 page."

7 Section 3. Section 14-2-11 NMSA 1978 (being Laws 1993,
8 Chapter 258, Section 8) is amended to read:

9 "14-2-11. PROCEDURE FOR DENIED REQUESTS.--

10 A. Unless a written request has been determined to
11 be excessively burdensome or broad, a written request for
12 inspection of public records that has not been permitted within
13 fifteen days of receipt by the office of the custodian may be
14 deemed denied. The person requesting the public records may
15 pursue the remedies provided in the Inspection of Public
16 Records Act.

17 B. If a written request has been denied, the
18 custodian shall provide the requester with a written
19 explanation of the denial. The written denial shall:

- 20 (1) describe the records sought;
- 21 (2) set forth the names and titles or
22 positions of each person responsible for the denial; [and]
- 23 (3) be made in the same form of medium,
24 electronic or paper, in which the written request was made; and
25 [~~3~~] (4) be delivered or mailed to the person

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1 requesting the records within fifteen days after the request
2 for inspection was received.

3 C. A custodian who does not deliver or mail a
4 written explanation of denial within fifteen days after receipt
5 of a written request for inspection is subject to an action to
6 enforce the provisions of the Inspection of Public Records Act
7 and the requester may be awarded damages. Damages shall:

8 (1) be awarded if the failure to provide a
9 timely explanation of denial is determined to be unreasonable;

10 (2) not exceed one hundred dollars (\$100) per
11 day;

12 (3) accrue from the day the public body is in
13 noncompliance until a written denial is issued; and

14 (4) be payable from the funds of the public
15 body."